

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT  
3                   OF NEW YORK

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5                   JACK A. BLACK, as Administrator of the Goods  
6                   and Chattels, Rights and Credits of  
7                   Christopher A. Black,

Plaintiff,

77-CV-279

-vs-

79-CV-92

8                   CORNELL UNIVERSITY and PAUL M. DARSIE, M.D.,

9                   Defendants.

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11                  Proceedings in the above-entitled matter  
12                  came on before the United States District Court,  
13                  Northern District of New York, U. S. Court House,  
14                  Syracuse, New York, on July 13, 1981, in chambers,  
15                  before the HONORABLE HOWARD G. MUNSON, Chief  
16                  U. S. District Court Judge for the Northern  
17                  District of New York.

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21                  Reported By:

22                  Hiram F. Sheffer  
23                  U. S. District Court Reporter

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1 APPEARANCES:

2 FOR THE PLAINTIFF: MATHEWS & LOVE, ESQS.  
3 University Building,  
4 Syracuse, New York 13202  
5  
6 BY: VERNER R. LOVE, ESQ.,  
7 Of Counsel.

8 FOR THE DEFENDANT: HANCOCK, ESTABROOK, RYAN,  
9 (Cornell) SHOVE & HUST, ESQS.  
10 One MONY Plaza  
11 Syracuse, New York 13202  
12  
13 BY: DONALD McCARTHY, ESQ.  
14 Of Counsel.

15 FOR THE DEFENDANT: SMITH, SOVIK, KENDRICK,  
16 (Dr. Darsie) McAULIFFE & SCHWARZER, ESQS.  
17 Empire Building,  
18 Syracuse, New York 13202  
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20 BY: LAURENCE SOVIK, ESQ.,  
21 Of Counsel.

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1 THE COURT: All right, Mr. McCarthy.

2 MR. McCARTHY: If your Honor please,

3 after some discussions here this morning,

4 I think that Mr. Love and I have agreed with  
5 respect to a settlement of the Plaintiff's  
6 action, the first action that he brought,  
7 which was against Cornell University.

8 But of course, as your Honor knows, a

9 motion was brought on by the Plaintiff some-  
10 time last year to consolidate the two actions  
11 the action against Cornell, and a second  
12 action that was brought against Dr. Darsie,  
13 and I think primarily in order to effect the  
14 settlement we would ask that your Honor  
15 sever those two actions.

16 Thereafter it is anticipated that the  
17 action against Cornell University and also  
18 claims based against the University as the  
19 agent, its employees or servants, and arising  
20 out of the incident which ultimately led to  
21 the death of Christopher Black, with the  
22 exception of the action brought against its  
23 employee, Dr. Darsie, for his alleged  
24 negligence and malpractice, all be discontinu-  
25 ed and settled on the merits.

1                   And also that the cost claim that was  
2                   interposed against Dr. Darsie would be dis-  
3                   continued at this time in, and of course all  
4                   of the considerations for, this disposition  
5                   would be the payment by representatives of  
6                   Cornell University to the Plaintiff in the  
7                   sum of \$55,000.

8                   THE COURT: And that would include any  
9                   claim that the Plaintiff's Administrator  
10                  would have for wrongful death or conscious  
11                  pain and suffering?

12                  MR. McCARTHY: Yes, and/or.

13                  THE COURT: Mr. Love?

14                  MR. LOVE: Yes, I agree with that and  
15                  I will join in the motion.

16                  THE COURT: All right, Mr. Sovik?

17                  MR. SOVIK: Well, I don't think that I  
18                  have any standing to object otherwise to the  
19                  motion.

20                  THE COURT: If the motion to sever is  
21                  granted, then the Amended Answer of Cornell  
22                  University, which includes the cross-claim  
23                  against the Defendant Dr. Darsie would have  
24                  to be stricken. That is the Answer that con-  
25                  tains the claim over against Dr. Darsie,

1                   isn't it?

2                   MR. McCARTHY: Right.

3                   THE COURT: And what would happen to Dr.  
4                   Darsie's Amended Answer which contains what  
5                   is titled as a Cross-Claim against Cornell?

6                   MR. SOVIK: I think that that is taken  
7                   care of by the General Obligations Law inso-  
8                   far as it is an active claim that is no  
9                   longer in the case. And since Dr. Darsie  
10                  has no claim against Cornell which he can  
11                  collect upon, it may or may not be in the  
12                  case, depending on what the proof develops  
13                  insofar as an apportionment of Cornell's  
14                  relative or proportionate culpable conduct  
15                  is concerned.

16                  I think that that has to await the  
17                  development of the proof, and if there is  
18                  some suggestion in the case or some proof  
19                  that Cornell independently of Dr. Darsie was  
20                  also guilty of culpable conduct, that would  
21                  have to be submitted to the jury in their  
22                  final instructions.

23                  It is a little bit hard to predict, at  
24                  this point, because we have not heard the  
25                  proof.

1 THE COURT: What you are saying is that  
2 if that is submitted to the jury, then the  
3 Defendant, Dr. Darsie, would be entitled to  
4 have set off against whatever verdict the  
5 jury might return, the percent of Cornell's  
6 culpable conduct, or the \$55,000, whichever  
7 is greater?

10 THE COURT: Do you understand that, Mr.  
11 Love?

12 MR. LOVE: I believe that would be the  
13 essence of the statute, Judge.

14 May we go off the record?

15 (Off-the-record discussion.)

16 THE COURT: Back on the record. I will  
17 grant the motion to sever the two actions,  
18 and those actions are 77-CV-279 and 79-CV-92.  
19 And I will approve the settlement in the  
20 amount of \$55,000.

21                           MR. LOVE: However, I would like to pre-  
22                           sent this settlement to Mr. Black as Administra-  
23                           tor of his son, Christopher Black's, estate.

24 THE COURT: That is all right.

25 (Whereupon Mr. Jack Black was brought into chambers.)

1                   THE COURT: Mr. Black, I have just been  
2                   informed by Counsel that you as Administrator  
3                   of your son's estate are willing to accept a  
4                   sum of \$55,000 in full settlement of the  
5                   action that you have brought against Cornell  
6                   University. Is that correct?

7                   MR. BLACK: That is correct.

8                   THE COURT: As I understand, Mr. Black,  
9                   that in the event that the case is tried  
10                  against Mr. Paul Darsie, that that \$55,000  
11                  can be used in mitigation of any judgment  
12                  that you receive against Mr. Darsie?

13                  MR. BLACK: Mr. Love has explained that  
14                  to me and I understand it.

15                  THE COURT: The jury will be requested  
16                  certainly by Mr. Sovik, and Counsel for Dr.  
17                  Darsie, that is they determine the percent of  
18                  culpable conduct that might be attributed to  
19                  Cornell University, and that that percent or  
20                  the \$55,000, whichever is higher, is to be  
21                  deducted from any verdict that they bring in  
22                  against Dr. Darsie.

23                  MR. BLACK: Mr. Love has explained that  
24                  to me, too, and I understand it.

25                  THE COURT: And you as Administrator

1                   would approve the settlement with Cornell  
2                   University?

3                   MR. BLACK: Yes, I do.

4                   THE COURT: Thank you. Is there any-  
5                   thing further, Gentlemen?

6                   MR. McCARTHY: No.

7                   MR. SOVIK: No.

8                   (Whereupon the proceedings in chambers were concluded.)

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11                   C E R T I F I C A T E

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13                   I, HIRAM SHEFFER, JR., Official Shorthand  
14                   Reporter for the United States District Court,  
15                   Northern District of New York, do hereby CERTIFY  
16                   that the foregoing record taken by me at the time  
17                   and place noted in the heading hereof is a true  
18                   and correct transcript of the same, to the best  
19                   of my ability and belief.

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23                   HIRAM SHEFFER, JR.  
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